UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD SEVENTH REGION

CHARTER SCHOOL ADMINISTRATION SERVICES, INC.

Employer

and Case 7-RC-23108

MICHIGAN EDUCATION ASSOCIATION/NEA1

Petitioner

APPEARANCES:

Mark S. Demorest and Melissa Demorest, Attorneys, of Birmingham, Michigan, for the Employer

Joseph H. Firestone, Attorney, of Southfield, Michigan, for the Petitioner

DECISION AND ORDER

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding ², the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are affirmed.

¹ The Petitioner's name appears as amended at the hearing.

² The Employer and Petitioner filed briefs which have been carefully considered.

- 2. The labor organization involved claims to represent certain employees of the Employer.³
- 3. Based on the findings herein that the Employer is exempt from the statutory jurisdiction of the Board, no question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

Issue

The sole issue is whether the Board has jurisdiction over the Employer. This depends on whether the Employer is an entity exempt from Board jurisdiction under Section 2(2) of the Act as a political subdivision under the test announced by the U.S. Supreme Court in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971). If the Employer is found not to be exempt from Board jurisdiction as a political subdivision, the parties stipulate, and I find, that the Employer otherwise is engaged in interstate commerce within the meaning of the Act. Both the Employer and Petitioner contend that the Employer is not an exempt political subdivision, but a private employer subject to Board jurisdiction. For the reasons set forth below, I find that the Employer is exempt from Board jurisdiction as a political subdivision under Section 2(2) of the Act. I further find that even if the Employer is not a political subdivision, the Board should decline jurisdiction for policy reasons.

Facts

The State of Michigan Revised School Code, MCL 380.501 et seq. (Code), authorizes certain public entities to charter and operate a public school academy (also commonly known as a charter school). These entities are the board of a public school district, an intermediate school board, the board of a community college, and the governing board of a state public university. Under the Code, a public school academy is a nonprofit corporation administered by a board of directors, but considered to be a part of the

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The parties stipulated to the appropriateness of the unit sought by Petitioner of all full-time and regular part-time teachers and counselors employed by the Employer at a facility located at 3000 Sashabaw Rd, Waterford, Michigan, but excluding guards and supervisors as defined in the Act and all other employees. In clarification of this unit description, the parties stipulated that any counselors are included in the appropriate unit with teachers, but that teacher's aides, school secretary, and attendance clerk should be excluded from that unit. The parties further stipulated that the principal, assistant principal, and school director are supervisors within the meaning of Section 2(11) of the Act.

Michigan public school system, and a State government agency.⁴ Any school age Michigan resident can attend classes. A public school academy is funded by State school aid payments pursuant to the Michigan School Aid Act of 1979, MCL 388.1601, essentially the same as other public schools. These payments are known as foundation grants or allowances, and are currently about \$7,000 per year, per student. A public school academy also may receive federal grants and fundraiser donations, but may not charge tuition. As a nonsectarian, government entity, a public school academy in Michigan is subject to a variety of State statutes, including Michigan's Freedom of Information Act, Open Meeting Act, the Uniform Budgeting and Accounting Act, and others. Council of Organizations v. Governor, 455 Mich. 557, 575 fn. 14, 566 N.W.2d 208 (1997).

The Code sets forth precise requirements for every public school academy charter created between an authorizing public body and a public school academy, outlining how the school is to operate and how the authorizing entity will exercise its oversight. A public school academy may operate a school and employ staff directly or enter into a management services agreement with a private educational service provider to perform this function.

The Employer, a Michigan for-profit corporation with corporate headquarters located in Southfield, Michigan, is a private educational services provider operating charter schools in various states. It does not manage any private schools. It performs many of the school administrative functions for charter schools from its corporate headquarters. The Employer has a president and chief financial officer who directs the company. Serving under him is a vice-president for facilities and public relations, a superintendent who oversees the educational programs of all charter schools managed by the Employer, and an unspecified number of regional directors, each of whom is responsible for a number of schools. It also employs a principal at each charter school managed by it.

Bay Mills Community College (BMCC), located in Brimley, Michigan, is a triballycontrolled, community college authorized under the Code to charter and operate a public school academy. It appears that the Bay Mills Indian tribe was empowered under federal law to create BMCC, which the record indicates is recognized under the Tribally Controlled Community College Assistance Act of 1978. BMCC has a Board of Regents that is appointed by the tribal council. Thus, while BMCC may not be a governmental entity, it

Section 501(1) provides:

A public school academy is a public school under section 2 of article VIII of the state constitution of 1963, is a school district for the purposes of section 11 of article IX of the state constitution of 1963 and for purposes of section 1225 and section 1351a, and is subject to the leadership and general supervision of the state board over all public education under section 3 of article VIII of the state constitution of 1963. A public school academy is a body corporate and is a governmental agency. The powers granted to a public school academy under this part constitute the performance of essential public purposes and governmental functions of this state.

was authorized under State law to charter a public school academy, which is considered to be a governmental entity. Pursuant to this authority, BMCC created the Academy of Waterford (Academy), located on Sashabaw Road in Waterford, Michigan, a Michigan nonprofit, tax exempt entity engaged in the business of a public school academy.

On November 27, 2002, the Board of Regents governing body of BMCC issued to the Academy a charter to operate a public school academy (charter school), and selected the Academy's board of directors. The charter governs the Academy's operation and BMCC's oversight of the Academy. BMCC may remove a member of the Academy's board at any time for any reason. Before the charter issued, the Academy was required to submit a final application satisfying all requirements of the Code. The Employer assisted the Academy in the preparation of the application and in the negotiation process with BMCC for the Academy's charter.

The charter between BMCC and the Academy provides that the Academy may employ its staff directly or enter into a management agreement with a private educational service provider, subject to review and approval of the BMCC Charter Schools Office. Pursuant to this authorization, on February 20, 2003, the Academy entered into a Management Agreement (Agreement) with the Employer. The Agreement is a management services contract and sets forth the duties and responsibilities of the Academy and the Employer. It essentially provides that for a designated term, the Employer will supply all labor, materials and supervision necessary for the provision of educational services to students, and will manage, operate and maintain the Academy in accordance with all instructional goals, policies, program, curriculum, and methods, as adopted by the Academy's board of directors.

Mindful of requirements of the Code for public schools, the Agreement unequivocally states that "CSAS [the Employer] shall be responsible and accountable to the [Academy] Board for the administration, operation and performance of the Academy. . . . the Employer shall be responsible for all of the management, operation, administration and education of the Academy as directed by the Board." The Academy's board of directors has the authority to adopt policy, rules and regulations, and the Employer is contractually directed to administer and enforce all rules, regulations and procedures adopted by the Academy's board. Except as provided in the Agreement, the Employer may not further subcontract the management, oversight or operation of the teaching and instructional program without the prior approval of the Academy board.

The Academy currently offers kindergarten through eighth grade instruction. The Academy's board of directors determines the policies regarding student recruitment, admission and discipline, which are implemented by the Employer. The Academy's board

approved a student/parent handbook prepared by the Employer. The charter between BMCC and the Academy prescribes the initial curriculum to be taught at the Academy. However, the Employer, following State of Michigan guidelines, develops the curriculum for the Academy, which then must be approved by the Academy's board. The Employer implements the curriculum, and also is responsible for professional development of Academy staff and teacher training. The Academy board determines the number of teachers, and the applicable grade levels and subjects, required for the operation of the Academy.

The Employer manages the Academy for a 12 percent fee of school revenues, which are based almost entirely on the per pupil allotment of taxpayer funds received from the Department of Education based on enrollment at the Academy, but which also may include federal grants and donations from fundraisers. The Employer prepares the budget for the Academy based on anticipated government revenues and anticipated expenses. The Academy board must approve the budget. The Employer is then bound to follow the budget or obtain further approval by the Academy board to spend outside the budget.

All personnel who perform services at the Academy, the principal, assistant principal, school director, teachers, counselors, teacher's aides, school secretary, attendance clerk and custodian, are employees of the Employer. It hires, fires, disciplines, assigns, transfers and evaluates school staff, including teachers and counselors. It currently employs about 14 teachers who teach at the Academy and at least one counselor. Other than hiring or retaining any employee convicted of a non-sex related felony, it has sole responsibility and authority regarding staffing, subject to constraints of the budget. Hiring or retaining any employee with a non-sex related felony requires approval by the Academy's board. The Employer sets the pay and benefits of Academy teachers based on the Academy board-approved budget. It also determines whether to give any raises, but must get approval from the Academy board for any amendment to the budget. Teachers employed at the Academy are provided a 401(k) retirement program by the Employer. They do not participate in the Michigan Public School Employee Retirement System and may not participate in a 403(b) plan.

As required of public schools in Michigan, students at the Academy take the Michigan Educational Assessment Program (MEAP) test, an assessment test that measures student performance. If students do not perform according to expectations, the Academy board may demand changes by the Employer to improve performance.

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⁵ Under the Code, persons convicted of certain listed sex crimes may not be employed by a charter school. MCL 380.1230(9).

In addition to the contractually prescribed expiration date, the Academy may terminate its Agreement with the Employer should it fail to remedy a material breach, fail to account to the board for its expenditures on behalf of the Academy, fail to follow the policies set by the Academy's board, or should the Academy receive unsatisfactory reports from BMCC or an educational consultant that the Academy board may retain to monitor the Employer's performance of its duties.

On July 20, 2006, pursuant to notice from the Michigan Department of Education (MDE) and exercise of its oversight of the performance of the Academy and the Employer, MDE's authorizing entity, BMCC, notified the Academy of its intent to revoke the Academy's charter for violations of applicable law and provisions of its charter. This revocation would have terminated the Academy's Agreement with the Employer. BMCC intended to revoke the Academy's charter because the Academy and the Employer had failed to maintain a balanced school budget for the years 2004 – 2006 as required under the Michigan School Aid Act. An investigation was conducted by BMCC's Charter Schools Office (CSO). It disclosed that the Employer had made expenditures beyond the Academy's approved budget, financing about \$1.4 million in deficit spending to the Academy without documentation and without the approval of the Academy's board of directors. The investigation further disclosed that the Employer had been hiring vendors to perform building repairs without the approval of the Academy's board. The investigation also disclosed that, in addition to a management fee, the Academy was paying a portion of the cost of computers and technology at, and rent for, the Employer's Southfield headquarters, as well as the Employer's employee salaries. Additionally, unannounced visits to the Academy by the CSO revealed that the Employer was using the gymnasium and hallways as classrooms, and that the number of students per classroom, and the overall number at the facility, exceeded allowable capacity.

The charter has not been revoked. BMCC and the Academy, with the concurrence of the Employer, agreed to an acceptable deficit elimination plan and modification of the Agreement to impose tighter accounting controls and disclosure requirements to the Academy board in order to monitor the Employer's expenditures and performance in its operation of the Academy. On May 15, 2007, after the Employer agreed to make changes to its Agreement with the Academy, BMCC issued a proposed Plan of Correction to allow continued operation of the Academy. Pursuant to this Plan of Correction, the Employer agrees to forgive all but \$450,000 of its loans and to abide by other revisions to the Agreement required by BMCC in order to keep the Academy open. The record indicates that, as of the date of the hearing on May 29, this Plan of Correction remained unsigned.

Analysis

The Board's authority to conduct representation elections extends only to entities affecting interstate commerce. The parties stipulated to commerce facts that the Employer is engaged in interstate commerce, and that the Board has jurisdiction unless the Employer is exempt as a political subdivision under Section 2(2) of the Act.

The Board has not squarely ruled on the jurisdictional question of charter schools. In *Management Training Corp*, 317 NLRB 1355 (1995), the Board announced that in deciding whether to assert jurisdiction over entities that operate under a contract with a governmental entity, it will consider only whether the subject entity meets the definition of an employer under Section 2(2) of the Act and satisfies the applicable monetary jurisdictional standard. Therefore, jurisdiction over the Employer is not defeated because of its relationship with the Academy. Instead, it must be determined whether the Employer is exempt from jurisdiction as a political subdivision within the meaning of *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971). In *Hawkins County*, the Supreme Court limited the political subdivision exemption of Section 2(2) to entities that are either (1) created by the state so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate.

Although the Academy is a public school and a government agency under State law, the Employer is not an entity created by the State of Michigan. Thus, it is not exempt from Board jurisdiction under the first analytical prong of *Hawkins County*.

In analyzing the second prong of the *Hawkins County* test, the Board examines the subject entity's actual operations to determine whether the extent of state control over its operations renders the entity exempt under Section 2(2) of the Act. In examining the operations, the Board considers several factors bearing on an entity's relation to the state: (1) whether the individuals who administer the Employer in question are appointed or subject to removal by public officials. See *Regional Medical Center at Memphis*, 343 NLRB 346, 358 (2004); *Oklahoma Zoological Trust*, 325 NLRB 171, 172 (1997); *Research Foundation of the City Univ. of N.Y.*, 337 NLRB 965, 969-970 (2002); (2) whether the Employer is publicly or privately funded. See *Regional Medical Center at Memphis*, supra at 359; *Rosenberg Library Association*, 269 NLRB 1173, 1175 (1984); *Research Foundation of the City Univ. of N.Y.*, supra at 970; *Cape Girardeau Care Center, Inc.*, 278 NLRB 1018, 1019 fn. 5 (1986); (3) whether the budget is subject to approval by any public entity or agent. See *Regional Medical Center at Memphis*, supra at 359; *Rosenberg Library Association*, supra at 1175; *Research Foundation of the City*

Univ. of N.Y., supra at 970; St Paul Ramsey Medical Center, 291 NLRB 755, 756 (1988); Cape Girardeau Care Center, supra at 1019 fn 5; (4) whether expenditures are subject to any public financial reporting or auditing strictures. See Regional Medical Center at Memphis, supra at 359; Oklahoma Zoological Trust, supra at 172; Rosenberg Library Association, supra at 1175; Research Foundation of the City Univ. of N.Y., supra at 970; (5) whether day-to-day management responsibilities are free from or subject to oversight. See Rosenberg Library Association, supra at 1175; Research Foundation of the City Univ. of N.Y., supra at 970; Cape Girardeau Care Center, supra at 1019-1020; and (6) whether the entity is governed by public record or open meeting requirements. See Regional Medical Center at Memphis, supra at 359; Oklahoma Zoological Trust, supra at 172.

I shall discuss separately each of these six factors bearing on the Employer's relationship to the state.

Whether the Individuals who Administer the Entity in Question are Appointed or Subject to Removal by Public Officials

There is a five-member Academy board of directors appointed by BMCC that functions basically as a public school board. The Employer is a private corporation whose own administrators are not directly appointed or removed by public officials. However, when the recent MDE-prompted investigation of Academy operations by BMCC disclosed certain irregularities by the Academy and the Employer, the public accountability of the Employer in its operation of the Academy became more transparent. In July 2006, BMCC decided to close the Academy absent agreement by the Academy, and indirectly the Employer, to a proposed Plan of Correction. Had the Employer not agreed to the changes set forth by the BMCC's proposed Plan of Correction that affected its profit and management, the Academy would have been closed and its Agreement with the Employer terminated. In effect, this would have resulted in the public removal of all Employer administrators of the Academy. Indeed, as the Plan of Correction apparently remained unsigned as of the date of the hearing, this result could still occur.

Whether the Employer is Publicly or Privately Funded

The Academy, as a public school, is funded primarily by public tax dollars under Michigan's State School Aid Act and cannot charge tuition. The Employer's pupil accounting department, on behalf of the Academy, prepares and submits to the State of Michigan and BMCC a report based on a pupil count that determines the amount of public funding received by the Academy. BMCC is the fiscal agent for the Academy. It receives

the school aid payments from the Michigan Department of Education, which it transfers, after assessing a three percent fee, to the Academy. Although the Employer does not directly receive these public payments, it extracts a 12 percent management fee from the Academy's public funding, and uses the remaining public funds for the operation of the Academy. It makes spending decisions and receives direct cost reimbursement of public money from the Academy for the operational expenses it incurs on behalf of the Academy. It sets pay rates for teachers and other employees. It issues paychecks on its own account to the school personnel it employs, based on the budgeted amount, and bills the Academy to reimburse the cost with the public funds.

Whether the Budget is Subject to Approval by any Public Entity or Agent

The Employer does not have to submit its corporate budget to any entity for public approval. However, pursuant to its Agreement with the Academy's board, its projected annual budget for the Academy must be submitted to the Academy's board of directors for approval. The Academy's fiscal year budget is prepared by the Employer in conjunction with the Academy principal and other administrators whom it employs. The Employer prepares this budget based on anticipated government revenues to, and anticipated expenses by, the Academy. The budget covers proposed operating expenses for the Academy, including teacher's salaries. After it submits this budget, the Academy's board then conducts a public hearing pursuant to the Open Meetings Act. At this meeting, a representative of the Employer presents and discusses the proposed budget with the Academy board and the public. After the public hearing, the budget is approved, modified, or rejected by the Academy's board.

Additionally, Academy policy set by its board, consistent with State law, requires that above a certain threshold dollar amount, \$20,000, the Employer must take bids and obtain approval of the Academy board before making any expenditures on behalf of the Academy. This includes hiring any vendors to perform work for the Academy or purchasing anything on behalf of the Academy.

Whether Expenditures are Subject to any Public Financial Reporting or Auditing Strictures

The Agreement between the Academy board and the Employer sets forth strict financial reporting requirements by which the Employer must abide. It is required to submit to the Academy's board of directors a projected annual budget for the board's approval. It also is required to submit to the Academy's board a detailed statement of all revenues and expenditures. In effectuating this requirement, it prepares and submits monthly financial information to the Academy board of directors for consideration and approval at their

monthly board meetings. This includes financial statements regarding receipt and expenditure of public funds by the Academy, with check registers, and any changing budget data. At least four times a year, the Employer also is contractually required to provide the Academy's board with reports regarding Academy operations, finances and student performance, all of which are then considered public records.

The Employer expenditures on behalf of the Academy also are subject to independent audit. Plante Moran performs a yearly audit of the Academy's financial statements, and these audits are considered to be public records. The Agreement provides for termination of the Agreement by the Academy before the end of its term should the Employer fail to account for its expenditures on behalf of the Academy.

The Employer also must keep Academy expenditures within the approved budget. After notification by the Michigan Department of Education that the Academy was impermissibly operating under a deficit budget, BMCC retained an independent consultant to audit Academy operations and discuss with the Employer representatives certain Academy financial information generated by the Employer. This independent BMCC investigation of the Academy and Employer operations determined that the Employer had spent money in excess of the Academy's budget and that it had failed to obtain approval, or properly account, for expenditures. These were among the violations of law and charter cited by BMCC for its proposed closing of the Academy. The BMCC Plan of Correction creates additional accounting controls and financial disclosure requirements to provide greater public oversight over the Employer's expenditures. These include submission to the Academy's board of the Employer's preliminary monthly expenditure reconciliations on behalf of the Academy, and reduction of the threshold amount of the Employer's expenditure requiring approval by the Academy's board from the statutory \$20,000 to \$10,000.

Whether Day-to-Day Management Responsibilities are Free From or Subject to Oversight

Employer administrators generally operate the Academy and perform the day-to-day management of the school, following State guidelines, the Academy charter and its Agreement, without direct public approval. In labor relations, the Employer makes personnel decisions, deciding who to hire at the Academy, except as to hiring any employee with a non-sex related felony. It also determines who to fire, although it would be required to terminate any employee hired in violation of the Agreement.

Although the Employer is entrusted to make day-to-day management decisions at the Academy, there is considerable public oversight by the Academy board of those decisions.

The Academy board sets all policies related to the governance of the Academy. The Employer is required to follow those policies. The Employer, by its various administrators assigned to manage the Academy, is at every administrative level accountable for its actions to the Academy's board. Following State guidelines, the Employer develops the school year calendar and curriculum for the Academy, which must be approved by the Academy's board. It maintains personnel files for employees of the Academy, and BMCC twice yearly audits these files to verify that teacher certification and background checks are in order. The Employer prepares and provides a monthly principal's report of Academy activities and student achievement to the Academy board of directors for consideration at their monthly board meetings. It prepares a required "Education Yes" report for the Academy to submit to the Michigan Department of Education.

The Academy board sets the school budget which the Employer must follow. The threshold limit of Employer expenditures within the budget, above which prior approval by the Academy board is required, has been modified. The Employer may not subcontract matters pertaining to its educational service without prior approval of the Academy board.

Thus, the Employer must abide by all Academy policies, rules, and budget in its management of the Academy. The Academy's board of directors may terminate the Agreement before the end of the contract term should the Employer commit a material breach of the Agreement, fail to account for its expenditures, fail to follow Academy policy or the law, or should the Academy receive unsatisfactory reports from BMCC pursuant to its periodic audit of Academy files, including information generated by the Employer. By proposing to revoke the Academy's charter due to financial deficits incurred by the Employer, absent the Employer agreeing to the BMCC Plan of Correction, and imposing changes regarding management of facility resources, BMCC as an authorizing entity for the State of Michigan demonstrated the indirect exercise of public control over Employer business decisions regarding the Academy.

Whether the Entity is Governed by Public Record or Open Meeting Requirements

The Employer's corporate meetings and business records are not public. However, documents prepared by it and submitted to the Academy board, and any meetings conducted by the Academy board regarding those documents or Employer actions in connection with its operation of the Academy become public and are subject to the Michigan Open Meetings Act requirements and FOIA. These include any Employer proposed changes to initial charter curriculum, the proposed annual budget prepared by the Employer, and various monthly financial statements and other documents, such as the monthly principal's report, which are prepared and submitted by the Employer to the Academy board in connection with its monthly meetings. As noted, the independent audits by Plante Moran, based in part

on financial statements prepared by the Employer for the Academy, are also subject to FOIA disclosure.

The above-examination demonstrates that the Employer has a strong relation to the State. Public school academies are highly regulated by Michigan law. As a charter school, the Academy is an exempt government entity possessing substantial budgetary and operational control over the Employer, and, indirectly, over its employees and labor relations. The Employer also has substantial corresponding reporting requirements to the Academy designed to implement these controls. BMCC, as the Academy's authorizing entity under Michigan law, also indirectly exerts considerable control over continuing Employer operations through its control of the Academy.

The Employer retains direct personnel authority over its employees. However, the Academy retains ultimate authority over Employer operations, including matters related to personnel, as the Employer must abide by all Academy policies, curriculum and budget, absent approval to act otherwise, impacting its independence of decision-making. Almost all operational funding for the Academy, including the management fee paid to the Employer, is public money, provided by Michigan taxpayers. Spending of those public funds is subject to considerable BMCC and Academy public oversight. The Academy must approve the budget proposed by the Employer, as well as certain expenditures by the Employer within that budget. Failure by the Employer to observe these financial strictures, or to spend within the budget approved by the Academy's board, may result in direct termination by the Academy of its Agreement with the Employer or indirect termination of the relationship by BMCC. In fact, BMCC, under pressure from the State, has proposed to exercise its control by revoking the Academy's charter, in part due to certain unauthorized financial actions by the Employer. Although the Employer and its employees make the dayto-day decisions for the Academy as to educational matters, it may not subcontract any educational service without approval of the Academy board and is obligated in the exercise of its decisions to follow policy, curriculum, and State law. Should it fail to honor these requirements, as has been revealed, the Academy, as the direct link in the public chain, can terminate its contract.

Both the Petitioner and Employer argue that the Board has asserted jurisdiction in analogous situations. The Petitioner notes that the Board has exercised jurisdiction over private subcontractors at public schools, citing *Rustman Bus Company*, 282 NLRB 152 (1986). That case involved a private bus company servicing a public school. *Rustman* and other public school cases in which the Board has asserted jurisdiction over a subcontractor have concerned the subcontracting of services peripheral to the schools' educational mission. The Academy has subcontracted to the Employer its core function of operating a

public school, subject to the complexities of State regulation and substantial public controls to insure accomplishment of the Academy's educational mission in the public interest.

The Employer cites health care and government contracting cases as analogous. Camden-Clark Memorial Hospital, 221 NLRB 945 (1975); University of Vermont, 297 NLRB 291 (1989); Princeton Health Care Center, 285 NLRB 1016 (1987); Morristown-Hamblen Hospital Association, 226 NLRB 76 (1976); Central Security Services, Inc., 315 NLRB 239 (1994); Correctional Medical Systems, Inc., 299 NLRB 654 (1990); Community Transit Services, Inc., 290 NLRB 1167 (1988); Long Stretch Youth Home, Inc., 280 NLRB 678 (1986). They are not analogous. Michigan public school academies are public schools, highly regulated by the State. Even if the Employer's relation to the State did not satisfy the second prong of *Hawkins County*, assertion of jurisdiction would create additional policy and legal issues unique to education involving State legislation and outside the Board's expertise and mission. These include issues of State-prohibited subjects of bargaining that may be mandatory subjects under Section 8(d) of the Act, and the prohibition of strikes by, and lockouts of, public school teachers, contrary to the Federal scheme. Other issues could arise due to a requirement under Michigan law that a school chartered by a local school district is bound by that school district's collective bargaining agreement. These potentially create a clash between State law and Federal preemption. Further, if the Board were to assert jurisdiction solely because a public school academy has decided to delegate management responsibility to a private intermediary to run the public school, there would be a potential for chaotic labor relations for Michigan charter schools. The Board would have no jurisdiction over those public school academies that decide to operate their own schools directly, creating dual and conflicting systems for regulating labor relations among Michigan charter schools. This would be particularly vexing if an academy terminated an agreement with its management company, but continued operating the school. The employees would lose their status under the Act and their Federal labor law rights.

Conclusion

For the reasons explicated above, and based on the entire record, I find that under the second analytical prong of *Hawkins County*, the Employer is an entity administered by individuals who are responsible to public officials or the general electorate. Accordingly, the Employer is an exempt political subdivision within Section 2(2) of the Act. In addition, even if *Hawkins County* does not dictate a finding that the Employer is a political subdivision, there are sound policy reasons why the Board should decline jurisdiction.

ORDER

IT IS ORDERED that the petition is dismissed.⁶

Dated at Detroit, Michigan, this 15th day of June 2007.

(SEAL)

"/s/[Stephen M. Glasser]."
/s/ Stephen M. Glasser
Stephen M. Glasser, Regional Director

National Labor Relations Board Seventh Region Patrick V. McNamara Federal Building 477 Michigan Avenue - Room 300 Detroit, Michigan 48226

⁶ Under the provisions of the Board's Rules and Regulations, a request for review of the Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th St., N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by June 29, 2007.